

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
February 24, 2011

In the Matter of T. MOORE, Minor.

No. 299306
Wayne Circuit Court
Family Division
LC No. 08-480722

Before: TALBOT, P.J., and SAWYER and M. J. KELLY, JJ.

TALBOT, P.J. (*concurring in part, dissenting in part*).

While I concur with the majority that termination of N. Moore's parental rights was not appropriate under MCL 712A.19b(3)(g) [failure to provide proper care and custody], I respectfully disagree with the remainder of the decision as I believe that termination was proper in accordance with MCL 712A.19b(3)(j) [reasonable likelihood of harm if returned to parent's home].

I believe the trial court clearly erred in failing to terminate Moore's parental rights under MCL 712A.19b(3)(j). A. Ocasio is this child's mother. Moore heard and was present for testimony in a different trial involving other children of Ocasio's that were not related to Moore. In the other case, nine-year-old TM1 described the sexual abuse that she suffered.¹ TM1 contracted genital herpes and maintained that her father, who also had genital herpes, gave her the disease. Moore was aware that TM1's father had been convicted of several counts of criminal sexual conduct as a result of his conduct with TM1. Yet Moore claimed that he did not know whether Ocasio or TM1 was telling the truth and that someone may have told TM1 what to say because she was interviewed without her parents present. While Moore indicated that he did not know who was telling the truth, he testified that he believed that Ocasio's parental rights should not have been terminated because she was not charged with a criminal offense relating to the sexual abuse. He characterized Ocasio as "the perfect mother" and claimed that "everybody makes mistakes."

¹ Although TM1 did not testify in this case, she testified in the case against Ocasio and the trial court took judicial notice of the file. This Court affirmed the termination of Ocasio's parental rights in *In re TM1, KO1, KO2, & TM2*, unpublished opinion per curiam of the Court of Appeals, issued May 27, 2010 (Docket No. 293763).

I believe that clear and convincing evidence supporting termination under § 19b(3)(j) existed based on Moore's testimony that he was willing to believe Ocasio despite her failure to protect another child from sexual abuse. Moore's predisposition to believe Ocasio over the evidence demonstrated a serious lack of judgment on his part, such that entrusting this child to his care would subject her to a serious risk of harm. Because only one basis for termination must be established to support termination², I believe the trial court erred in failing to terminate Moore's rights under this statutory provision. Commensurately, I would find that the trial court clearly erred in determining that termination was not in the minor child's best interests. There was sufficient evidence to demonstrate that the child would be subject to a serious risk of harm in Moore's care. Moore maintained that Ocasio was the perfect mother and did nothing wrong despite evidence to the contrary. Maintaining such a position, after having taken and purportedly completing parenting classes suggests that Moore failed to sufficiently benefit from any such instruction. I would, therefore, find that termination of Moore's parental rights is in the child's best interests.

/s/ Michael J. Talbot

² *In re Sours*, 459 Mich 624, 632; 593 NW2d 520 (1999).